

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
i2way Request for Declaratory Ruling)	
Regarding the Ten-Channel Limit)	WT Docket No. 02-196
of Section 90.187(e) of the Commission's)	
Rules)	
)	
Hexagram Petition to Deny i2way)	
Applications)	

TO: The Commission

MOTION FOR ACCEPTANCE OF LATE FILING

Hexagram, Inc. moves for acceptance of the attached "Opposition of Hexagram, Inc. to Application for Review of i2way Corporation" one business day out of time.

Hexagram's opposition is late solely because i2way did not serve Hexagram with its Application for Review, as the Commission's Rules require.¹ Hexagram's counsel discovered the i2way filing fortuitously on Saturday, May 17. This Motion and Opposition are being filed on the next business day.

¹ "The application for review shall be served upon the parties to the proceeding."
47 C.F.R. Sec. 1.115(f).

A grant of this motion will avoid improperly rewarding i2way for its disregard of the service requirement, and should not prejudice or unduly inconvenience any party.

Respectfully submitted,

Mitchell Lazarus
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0440
Counsel for Hexagram, Inc.

May 19, 2003

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
i2way Request for Declaratory Ruling)	
Regarding the Ten-Channel Limit)	WT Docket No. 02-196
of Section 90.187(e) of the Commission's)	
Rules)	
)	
Hexagram Petition to Deny i2way)	
Applications)	

TO: The Commission

**OPPOSITION OF HEXAGRAM, INC. TO
APPLICATION FOR REVIEW OF I2WAY CORPORATION**

Pursuant to Section 1.115(d) of the Commission's Rules, Hexagram, Inc. submits this
Opposition to the Application for Review of i2way Corporation (filed May 1, 2003).

**A. The Commission Should Dismiss i2way's Application for Review for
Failure to Comply with the Procedural Rules.**

i2way's Application for Review ignores the Commission's procedural rules in two
respects.

First, i2way failed to serve other parties to the proceeding, as required under the
Commission's Rules.¹ i2way's pleading as filed with the Commission failed to include a
certificate of service, in violation of Section 1.47(g).² Neither Hexagram nor its counsel received
actual service.

¹ "The application for review shall be served upon the parties to the proceeding."
47 C.F.R. Sec. 1.115(f).

² 47 C.F.R. Sec. 1.47(g).

Second, i2way failed to provide the information required to be "specif[ied] with particularity" under Section 1.115(b)(2).

Taken together, these omissions unfairly hinder other parties in preparing a timely and informed opposition. The Application for Review should be dismissed.

B. Any Grant of i2way's Application for Review Should Be Conditioned on Enforcement of i2way's Non-Interference Commitments.

i2way's original applications and supporting documents requested relief from certain licensing rules, including the ten-channel limit and the requirement for frequency coordination.³ In exchange, i2way offered to deploy technology that would protect all co-channel licensees. i2way subsequently disclaimed any obligation to protect Hexagram and its customers. Yet i2way's Application for Review continues to seek unprecedented latitude to range at will across the UHF mobile band.

In short, i2way asks to be free of rules intended to limit interference, but offers no assurance that it will prevent interference by other means.

Hexagram thinks the Commission's reading of its ten-channel rule is correct for the reasons set out in the Order.⁴ i2way's construction strains the rule beyond reason. Nonetheless, Hexagram does not object to the Commission's waiving the rule to relieve i2way of the ten-

³ For details on the assertions in this paragraph and citations to i2way's submissions and the Commission's Rules, see Application for Review of Hexagram, Inc. (filed May 1, 2003).

⁴ *i2way Request for Declaratory Ruling*, in WT Docket No. 02-196, Order, DA 03-1044 (Wireless Telecom. Bur. released April 1, 2003).

channel limit *if the Commission holds i2way to its original commitments to avoid interfering with other all users* -- that is, if the Commission also grants Hexagram's Application for Review.⁵

The ten-channel rule was adopted to prevent a licensee from occupying excess unneeded spectrum.⁶ i2way asked to be excused from the rule on the ground that its technology would avoid frequencies anyone else needed at a particular moment.⁷ The Commission should condition any interpretation or waiver of the ten-channel rule on i2way's simply doing what it said it would: refrain from transmitting on channels occupied by other users, including Hexagram and its customers.

⁵ Hexagram's Application for Review asks the Commission to "*either* (1) requir[e] i2way to deliver the protection it offered to all co-channel users, *or* (2) hold[] i2way to all of the same rules as any ordinary licensee, including (among others) the requirement for frequency coordination and the ten-channel trunking limit." Application for Review of Hexagram, Inc. at 17-18 (emphasis in original).

⁶ *Replacement of Part 90 by Part 88*, 14 FCC Rcd 10922 at para. 18 (1999) (agreeing with need to limit authorizations that would not be immediately used, with potential for warehousing).

⁷ See note 3.

CONCLUSION

i2way's application is procedurally defective and for that reason should be dismissed. In the alternative, if the Commission considers i2way's request to use more than ten channels in an area, it should also enforce the commitments i2way made in return for that flexibility.

Respectfully submitted,

Mitchell Lazarus
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0440
Counsel for Hexagram, Inc.

May 19, 2003

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, an employee of the firm of Fletcher, Heald & Hildreth, PLC, certify that this day of May 19, 2003, I have caused the foregoing "Motion for Acceptance of Late Filing" and "Opposition of Hexagram, Inc. to Application for Review of i2way Corporation" to be sent by first class mail, postage prepaid, to the persons named below, except that persons identified as being affiliated with the Federal Communications Commission were instead served by hand delivery and by email.

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

William W. Kunze, Esq.
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

Paul D'Ari, Chief
Policy and Rules Branch
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

Gayle Heazlett
Enterprise Infrastructure Manager
Denver Water
1600 West 12th Avenue
Denver, CO 80201-3412

Jeremy Denton
Director, Government Affairs
Robin Landis
Regulatory Affairs Assistant
Industrial Telecommunications
Association, Inc.
1110 North Glebe Road, Suite 500
Arlington, VA 22201

Mary E. Brooner
Director, Telecommunications
Strategy & Regulation
Bette Rinehart
National Regulatory Affairs Administrator
Motorola Inc.
1350 I Street, NW, Suite 400
Washington, DC 20005

Larry Miller
President
Land Mobil Communications Council
1110 North Glebe Road, Suite 500
Arlington, VA 22201-5720

L. Sue Scott-Thomas
KNS Communications Consultants
10265 West Evans Avenue
Denver, CO 80227-2089

Robert De Buck
Buck Electric Company
PO Box 1458
Edgewood, NM 87015-1458

The Honorable Pete Domenici
United States Senate
Washington, DC 20510-3101

John L. Jones
Entranosa Water & Wastewater Association
PO Box 2380
Tijeras, NM 87059

The Honorable Jeff Bingaman
Unites States Senate
703 Hart Senate Office Building
Washington, DC 20510-3102

Frederick J. Day, Esq.
Day & Cukier
5673 Columbia Pike, Suite 110
Falls Church VA 22041
Counsel for i2way Corporation

Deborah N. Lunt